



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0113; FRL-9929-82-Region 4]

Approval and Promulgation of Implementation Plans;

Georgia; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency(EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on January 22, 2015, to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and to allow for the decommissioning of existing Stage II equipment. EPA has preliminarily determined that Georgia's January 22, 2015, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-

0113, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. *E-mail*: R4-ARMS@epa.gov.
3. *Fax*: (404) 562-9019.
4. *Mail*: “EPA-R04-OAR-2015-0113” Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier*: Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2015-0113. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's phone number is (404) 562-9222. She can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background for Atlanta's Air Quality Status Related to the 1-Hour Ozone NAAQS

On November 6, 1991, EPA designated and classified the following counties in and around the Atlanta, Georgia, metropolitan area as a serious ozone nonattainment area for the 1-hour ozone NAAQS (hereinafter referred to as the "Atlanta 1-Hour Ozone Area" or "Area"): Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.¹ *See* 56 FR 56694. The nonattainment designation was based on the Atlanta 1-Hour Ozone Area's design value for the 1987-1989 three-year period. The "serious" classification triggered various statutory requirements for the Atlanta 1-Hour Ozone Area, including the requirement pursuant to section 182(b)(3) of the CAA for the Area to require all owners and operators of gasoline dispensing systems to install and operate a system for gasoline

¹ On September 26, 2003 (effective January 1, 2004), the Atlanta 1-Hour Ozone Area was reclassified to "severe" for the 1-hour ozone NAAQS because the Area failed to attain the 1-hour ozone NAAQS by its attainment date of November 15, 1999. *See* 68 FR 55469.

vapor recovery of emissions from the fueling of motor vehicles known as “Stage II.”² EPA redesignated the Atlanta 1-Hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005.^{3,4} *See* 70 FR 34660 (June 15, 2005).

II. Background for Federal Stage II Requirements

Under section 182(b)(3) of the CAA, each state was required to submit a SIP revision to implement Stage II for all ozone nonattainment areas classified as moderate, serious, severe, or extreme, primarily for the control of volatile organic compounds (VOC) – a precursor to ozone formation.⁵ However, section 202(a)(6) of the CAA states that the section 182(b)(3) Stage II

² Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle’s fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

³ On April 30, 2004, EPA designated the following 20 counties in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 1997 8-hour ozone NAAQS: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. *See* 69 FR 23858. Subsequently, EPA reclassified these counties as a moderate ozone nonattainment area on March 6, 2008, because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. *See* 73 FR 12013. Subsequently, the area attained the 1997 8-hour ozone standard, and on December 2, 2013, EPA redesignated the counties to attainment for the 1997 8-hour ozone NAAQS. *See* 78 FR 72040.

⁴ On May 21, 2012, EPA published a final rule designating the following 15 counties in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 2008 8-hour ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. *See* 77 FR 30088.

⁵ Section 183(b)(3) states that all ozone nonattainment areas classified as moderate or above submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Specifically, the CAA specifies that the Stage II must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an ISBM. Additionally, the CAA specified the deadlines by which certain facilities must comply with the Stage II requirements. For facilities that are not owned or operated by an ISBM, these deadlines, calculated from the time of State adoption of the Stage II requirements, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) by November 15, 1994, for all other facilities. For ISBM’s, section 324(a) of the CAA provides the following three-year phase-in period: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect; (2) 66 percent of such facilities by the end of the second year; and (3) 100 percent of such facilities after the third year.

requirements for moderate ozone nonattainment areas shall not apply after the promulgation of on-board vapor recovery (ORVR) standards.⁶ ORVR standards were promulgated by EPA on April 6, 1994. *See* 59 FR 16262 and 40 CFR parts 86 (including sections 86.098–8), 88 and 600. As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas were able to submit SIP revisions, in compliance with section 110(l) of the CAA, to remove Stage II requirements from their SIPs. EPA’s policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provide further guidance on removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993, states that “[w]hen onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or from consideration as a SIP revisions) consistent with its obligations under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirement of the Act.”⁷

CAA section 202(a)(6) also provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for serious, severe, and extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. On May 16, 2012, in a rulemaking entitled “Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver,”

⁶ ORVR is a system employed on gasoline-powered highway motor vehicles to capture gasoline vapors displaced from a vehicle fuel tank during refueling events. These systems are required under section 202(a)(6) of the CAA and implementation of these requirements began in the 1998 model year. Currently they are now used on all gasoline-powered passenger cars, light trucks and complete heavy trucks of less than 14,000 pounds GVWR. ORVR systems typically employ a liquid file neck seal to block vapor escape to the atmosphere and otherwise share many components with the vehicles’ evaporative emission control system including the onboard diagnostic system sensors.

⁷ Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Areas* (March 9, 1993), available at: http://www.epa.gov/ttn/naaqs/aqmguid/collection/cp2/19930309_seitz_onboard_impact_stage2_.pdf.

EPA determined that ORVR technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. *See* 77 FR 28772. By that action, EPA waived the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as serious and above for the ozone NAAQS. Effective May 16, 2012, states implementing mandatory Stage II programs under section 182(b)(3) of the CAA were allowed to submit SIP revisions to remove this program. *See* 40 CFR 51.126(b).⁸ On April 7, 2012, EPA released the guidance entitled “Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures” for states to consider in preparing their SIP revisions to remove existing Stage II programs from state implementation plans.⁹

III. Background for Georgia’s Stage II Requirements for Atlanta

On November 13, 1992, the State of Georgia submitted a SIP revision to address the Stage II requirements for the Atlanta 1-Hour Ozone Area. EPA approved that SIP revision, containing Georgia’s Stage II rule (Georgia Rule 391-3-1-.02(2)(zz) - *Gasoline Dispensing Facilities-Stage II*) in a notice published on February 2, 1996. *See* 61 FR 3819. Georgia’s Stage II rule, as currently incorporated into the SIP, requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The rule requires sources to verify proper installation

⁸ Under CAA section 202(a)(6), EPA found that ORVR systems are in widespread use in the motor vehicle fleet and waived the CAA section 182(b)(3) Stage II vapor recovery requirement for serious and higher ozone nonattainment areas on May 16, 2012 (77 FR 28772). Thus, in its implementation rule for the 2008 ozone NAAQS, EPA removed the section 182(b)(3) Stage II requirement from the list of applicable requirements in 40 CFR 51.1100(o). *See* 80 FR 12264 (March 6, 2015) for additional information.

⁹ This guidance document is available at: <http://www.epa.gov/groundlevelozone/pdfs/20120807guidance.pdf>.

and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). The State also established an inspection program consistent with that described in EPA's Stage II guidance and has established procedures for enforcing violations of the Stage II requirements.

IV. Analysis of the State's Submittal

On January 22, 2015, Georgia submitted a SIP revision to EPA with a request to modify its Stage II rule, Georgia Rule 391-3-1-.02(2)(zz) - *Gasoline Dispensing Facilities-Stage II*, in the State's implementation plan. These modifications would remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allow for the decommissioning of existing Stage II equipment. EPA's primary consideration for determining the approvability of Georgia's request is whether this requested action complies with section 110(l) of the CAA.¹⁰

Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending

¹⁰ CAA section 193 is not relevant because Georgia's Stage II rule was not included in the SIP before the 1990 CAA amendments.

on the nature of the emissions associated with the proposed SIP revision. EPA's analysis of Georgia's January 22, 2015, SIP revision pursuant to section 110(l) is provided below.

In its January 22, 2015, SIP revision, GA EPD used EPA's guidance entitled "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," to conduct a series of calculations to determine the potential impact of removing the Stage II program on air quality.¹¹ GA EPD's analysis focused on VOC emissions because, as mentioned above, Stage II requirements affect VOC emissions and because VOCs are a precursor for ozone formation.¹² The results of GA EPD's analysis is provided in the table below.

Table: VOC emissions difference between Stage II VRS in place and removed

Year	VOC emissions (tons per day)
2008	N/A
2012	N/A
2013	N/A
2014	+0.92

¹¹ EPA, Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, EPA-457/B-12-001 (Aug. 7, 2012), available at: <http://www.epa.gov/groundlevelozone/pdfs/20120807guidance.pdf>. This guidance document notes that "the potential emission control losses from removing Stage II VRS are transitional and relatively small. ORVR-equipped vehicles will continue to phase in to the fleet over the coming years and will exceed 80 percent of all highway gasoline vehicles and 85 percent of all gasoline dispensed during 2015. As the number of these ORVR-equipped vehicles increase, the control attributed to Stage II VRS will decrease even further, and the potential foregone Stage II VOC emission reductions are generally expected to be no more than one percent of the VOC inventory in the area."

¹² Several counties in and around metropolitan Atlanta are currently designated nonattainment for the 1997 Annual fine particulate matter (PM_{2.5}) standard. While VOC is one of the precursors for particulate matter (NAAQS) formation, studies have indicated that, in the southeast, emissions of direct PM_{2.5} and the precursor sulfur oxides are more significant to ambient summertime PM_{2.5} concentrations than emissions of nitrogen oxides and anthropogenic VOC. See, e.g., *Journal of Environmental Engineering- Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States* (June 24, 2009), available at: <http://www.journals.elsevier.com/journal-of-environmental-management>. Currently, counties in and around metropolitan Atlanta are not designated nonattainment for any of the other criteria pollutants (i.e., sulfur dioxide, nitrogen dioxide, lead or carbon monoxide) and those pollutants are not affected by the removal of Stage II requirements.

2015	+0.37
2016	-0.085

In summary, GA EPD compared the VOC emissions with the continued implementation of the Stage II program and to the VOC emissions with only ORVR controls in place. GA EPD's analysis estimated that during the phase-out of Stage II there would be a small increase of 0.92 tpd in 2014, however, the emissions increase would be less (at 0.37 tpd) in 2015. For 2016, GA EPD calculated that there would be an emissions disbenefit of 0.085 tpd due to the incompatibility of Stage II and ORVR systems (i.e., leaving Stage II in place would result in a VOC emissions increase due to its incompatibility with ORVR).¹³

Although GA EPD anticipates a temporary increase of 0.37 tpd in VOC emissions in 2015, the State provided a technical analysis, including sensitivity modeling, to demonstrate that the Atlanta metropolitan area is NO_x-limited with regard to ozone formation. If an area is NO_x-limited, changes to VOC emissions have little effect on ozone formation. In EPA's guidance entitled "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," EPA addresses situations where emissions increase do not interfere with attainment. EPA specifically acknowledges that there may be areas where ozone formation is limited by the availability of NO_x emissions, and that a small (and ever-declining) increase in VOC emissions may have little or no effect on future

¹³ Compatibility problems can result in an increase in emissions from the underground storage tank (UST) vent pipe and other system fugitive emissions related to the refueling of ORVR vehicles with some types of vacuum assist-type Stage II systems. This occurs during refueling an ORVR vehicle when the vacuum assist system draws fresh air into the UST rather than an air vapor mixture from the vehicle fuel tank. Vapor flow from the vehicle fuel tank is blocked by the liquid seal in the fill pipe which forms at a level deeper in the fill pipe than can be reached by the end of the nozzle spout. The fresh air drawn into the UST enhances gasoline evaporation in the UST which increases pressure in the UST. Unless it is lost as a fugitive emission, any tank pressure in excess of the rating of the pressure/vacuum valve is vented to the atmosphere over the course of a day. Due to the increased use of ORVR, a disbenefit will exist until Stage II is removed in the Atlanta Area.

ozone levels.

EPA has reviewed GA EPD's January 22, 2015, SIP revision to remove Stage II requirements for the Area, and is proposing to determine that the associated technical analysis is consistent with EPA's guidance on removing Stage II requirements from a SIP. EPA is also making the preliminary determination that GA EPD's SIP revision is consistent with the CAA and with EPA's regulations related to removal of Stage II requirements from the SIP.

V. Proposed Action

EPA is proposing to approve Georgia's January 22, 2015, SIP revision that changes Georgia's Stage II rule, 391-3-1-.02(2)(zz), to allow for the removal of the Stage II requirement and the orderly decommissioning of Stage II equipment. EPA is proposing this approval because the Agency has made the preliminary determination that Georgia's January 22, 2015, SIP revision related to the State's Stage II rule is consistent with the CAA and with EPA's regulations and guidance.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Incorporation by reference, Nitrogen Dioxide, Ozone, Reporting and Recordkeeping Requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 18, 2015.

Heather McTeer Toney,

Regional Administrator,

Region 4.

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